STATE OF MICHIGAN

COURT OF APPEALS

In re TERRENCE ALLEN WALKER, Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRENCE ALLEN WALKER,

Defendant-Appellant.

UNPUBLISHED
February 16, 2006

No. 258129
Kent Circuit Court
LC No. 97-001809-DL

Before: Borrello, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Defendant, a minor, appeals by leave granted from his adjudication of guilty of possessing marijuana, MCL 333.7403(2)(d), and possessing less than twenty-five grams of cocaine, MCL 333.7403(2)(a)(v). At a disposition hearing, the trial court made defendant a temporary ward of the court, placed him on community probation in the home of his mother and ordered that he have no contact with Vincent,[1] attend school daily, complete a substance abuse assessment, pay a victim assessment fee of $20, write a letter of apology, and complete eight hours of community service. We affirm.

Officers of the Grand Rapids Police Department observed defendant and his cousin engaged in apparent drug activity on the glass-enclosed porch of defendant's home. When defendant's cousin left the porch, Officer Patrick Harig arrested him while another officer, Todd Allen, confronted defendant. Officer Allen entered the porch, found a small amount of marijuana, and arrested defendant. When searching him following the arrest, the officer found five rocks of crack cocaine in defendant's pocket.

On appeal, defendant asserts that the trial court erred in denying his motion to suppress the drug evidence. Specifically he contends that there were no exigent circumstances to justify the warrantless search of the porch and, therefore, the marijuana and cocaine should have been suppressed.

[1] Vincent is defendant's cousin who was also involved in this incident.

This Court reviews a trial court's factual findings at a suppression hearing for clear error. *People v Oliver*, 464 Mich 184, 191; 627 NW2d 297 (2001); *People v Custer*, 465 Mich 319, 325-326; 630 NW2d 870 (2001). A finding is clearly erroneous if, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made. *People v Frohriep*, 247 Mich App 692, 702; 637 NW2d 562 (2001).

Both the Fourth Amendment of the United States Constitution and its counterpart in the Michigan Constitution guarantee the right of persons to be secure against unreasonable searches and seizures. U S Const, Am IV; Const 1963, art 1, § 11. Searches conducted without a warrant are per se unreasonable unless the police have probable cause and their conduct falls within one of the established exceptions to the warrant requirement. *People v Borchard-Ruhland*, 460 Mich 278, 293-294; 597 NW2d 1 (1999); *In re Forfeiture of $176,598*, 443 Mich 261, 266; 505 NW2d 201 (1993). Probable cause "exists when facts and circumstances warrant a reasonably prudent person to believe that a crime has been committed and that the evidence sought will be found in a stated place." *People v Brzezinski*, 243 Mich App 431, 433; 622 NW2d 528 (2000). The recognized exceptions to the warrant requirement include "exigent circumstance, searches incident to a lawful arrest, stop and frisk, consent, and plain view." *Id.*

In describing the exigent circumstances exception, our Supreme Court stated:

> [T]he police may enter a dwelling without a warrant if the officers possess probable cause to believe that a crime was recently committed on the premises, and probable cause to believe that the premises contain evidence or perpetrators of the suspected crime. The police must further establish the existence of an actual emergency on the basis of specific and objective facts indicating that immediate action is necessary to (1) prevent the imminent destruction of evidence, (2) protect the police officers or others, or (3) prevent the escape of a suspect. If the police discover evidence of a crime following the entry without a warrant, that evidence may be admissible. [*In re Forfeiture of $176,598*, *supra*, 271.]

Additionally, "[a] search of a person incident to an arrest requires no additional justification." *People v Champion*, 452 Mich 92, 115; 549 NW2d 849 (1996), citing *United States v Robinson*, 414 US 218; 94 S Ct 467; 38 L Ed 2d 427 (1973). Thus, the exception to the warrant requirement regarding such searches allows an officer to search the person arrested and seize any evidence found in order to prevent its concealment or destruction. *People v Solomon*, 220 Mich App 527, 530; 560 NW2d 651 (1996), citing *People v Arterberry*, 431 Mich 381, 384; 429 NW2d 574 (1988).

In the instant case, the trial court did not err in finding that the officers had probable cause to search the porch where defendant was sitting. Officer Harig testified that he observed defendant dragging something across the ledge of the porch. When defendant's cousin placed some of the substance into an empty cigar wrapper and began smoking it, Harig concluded that the substance might be marijuana. Further, Officer Allen testified that when he approached the house, he observed marijuana spread out on the ledge of the porch. Based on these observations, a reasonably prudent person could believe that a crime had been committed and that evidence of that crime would be found on the porch of defendant's home.

Similarly, the trial court did not clearly err in finding that exigent circumstances justifying a warrantless search existed. At the suppression hearing, Officer Allen testified that, after he knocked on the door of the porch, defendant stuffed something into his pocket, brushed the marijuana off the ledge, and dropped down out of sight. Officer Allen stated that he entered the porch and arrested defendant because he feared defendant could be attempting to destroy or conceal evidence or could be reaching for a weapon. Thus, the prosecution presented evidence tending to establish the existence of an actual emergency requiring immediate action to "prevent the imminent destruction of evidence." *In re Forfeiture of $176,598*, *supra* at 271. In light of the evidence, we are not left with a definite and firm conviction that the trial court erred in finding that, because of defendant's apparent ability to quickly remove the evidence, excited circumstances existed. Consequently, the police were justified in entering defendant's porch without a warrant. The trial court did not err in denying defendant's motion to suppress the evidence relating to the marijuana found there.

Further, because the police lawfully arrested defendant for possession of the marijuana, they had the authority to search him without a warrant and seize any contraband discovered on his person. *Solomon*, *supra* at 530. Thus, the trial court was also correct in refusing to suppress evidence of the cocaine discovered in defendant's pocket.

Affirmed.

/s/ Stephen L. Borrello
/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald